

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**Th12d**

Filed:	10/27/99
49th day:	12/15/99
180 <sup>th</sup> day:	04/24/00
Staff:	SM - SC
Staff report:	04/19/00
Hearing date:	05/9-12/00
Commission Action:	
Open & Continue:	12/09/99
Substantial Issue:	02/16/00

## REGULAR CALENDAR: COASTAL DEVELOPMENT PERMIT

---

**Application Number.....A-3-SLO-99-083**

**Applicant .....A.J. Wright**

**Agent .....Jeff Edwards**

**Project Location.....**Three acre site on the northwest Corner of Santa Ynez Avenue and Mountain View, Los Osos, San Luis Obispo County; APN 074-223-004

**Project Description.....**After-the-fact approval for grading and vegetation removal; construction of twelve one-story storage buildings totaling 60,000 square feet, with associated paving, parking, landscaping, and street improvements, for a total site coverage of approximately 2.85 acres; mitigation for vegetation removal consisting of the purchase and restoration of 1.79 acres of coastal scrub habitat, financing an additional 0.35 acres of habitat acquisition, and placing 0.15 acres of the site in an open space easement.

**Local Approvals.....**The Minor Use Permit/Coastal Development Permit required for the grading, vegetation removal, and storage project was approved by San Luis Obispo County on September 17, 1999

**File Documents.....**San Luis Obispo County certified Local Coastal Program; San Luis Obispo County's Administrative Record for Minor Use Permit D9800854P; *U.S. Fish and Wildlife Service v. A.J. Wright*, INV 107002158 – Settlement Agreement; U.S. Fish and Wildlife Service Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California, September 1998; Baywood and Los Osos Conservation Plan, The Land Conservancy of San Luis Obispo, July 1998; Los Osos/Baywood Park Greenbelt Conservation Plan, prepared for the Land Conservancy of San Luis Obispo by Jones & Stokes Associates, Inc., February 7, 1997

**Staff Recommendation...Approval with Conditions**

---



**California Coastal Commission**  
**May 11, 2000 Meeting in Santa Rosa**

Staff: SM Approved by:  
C:\TEMP\A-3-SLO-99-83 (Wright) De Novo SR.doc

## Executive Summary

The proposed project involves construction of a mini storage facility on a 3-acre site in the town of Los Osos, and “after-the fact” approval of grading and vegetation removal that previously occurred without the necessary coastal development permit. Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail and qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the LCP, was lost as a result of this grading.

The Coastal Development Permit approved by San Luis Obispo County on September 17, 2000 authorized the previously completed grading and vegetation removal, and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet (1.4 acres). The project also includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. 0.15 acres along the site’s northern boundary, which had not been graded, will be placed in an open space easement.

As mitigation for the loss of snail habitat, and to resolve an apparent violation of the federal Endangered Species Act, the applicant entered into a Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit E). The provisions of this Agreement are reflected in the County’s conditions of approval of the storage project (attached as Exhibit D). In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that the U.S. Fish and Wildlife Service (USFWS) has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record an open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to USFWS.

The proposed project and associated Settlement Agreement are inconsistent with LCP ESHA policies for numerous reasons. First, ESHA Policy 1 reflects Coastal Act Section 30240 by limiting development within ESHA to uses that are dependent on the resource and prohibiting significant disruptions to ESHA. A storage facility is clearly not a use that is dependent upon being located in a sensitive habitat area, and the removal of over 2 acres of sensitive habitat to accommodate such a use represents a significant disruption.

Second, ESHA Policy 2 requires development in or near sensitive habitats to be consistent with the biological continuance of the habitat. The project will permanently remove approximately 2 acres of sensitive habitat, in exchange for the acquisition and protection of an equivalent amount of existing habitat at an off site location. This represents a net reduction in habitat available to support the biological continuance and recovery of the Morro shoulderband snail.

Third, ESHA Policy 2 also requires development within and adjacent to ESHA to provide the maximum feasible mitigation. In this case, maximum feasible mitigation would include preserving/restoring as much



of the sensitive habitat that existed on the site as possible, while still allowing for a reasonable economic use. No on site restoration is included in the proposed project, and the development of a storage facility involves an excessive amount of site coverage and habitat removal that is not necessary to allow for an economic use.

Given these inconsistencies, staff is recommending approval of a reduced project that complies with LCP ESHA policies and would still allow a reasonable economic use on the site. This involves restoring the habitat that previously existed on the site, and allowing a smaller storage facility, or alternative economic use, to be established on a portion of the site equivalent to the area that was not originally ESHA (approximately 1 acre). It also includes implementation of the Settlement Agreement with USFWS in order to mitigate for the temporary loss of habitat associated with the previous vegetation removal, account for the uncertain success of on-site restoration, and address the reduced value of the on-site habitat that will result from the new development.

It is noted that both the applicant and the U.S. Fish and Wildlife Service have expressed concern that should the Commission prohibit the construction of the storage project, or require substantial revisions, that the mitigation for the loss of habitat, as embodied in the Settlement Agreement, could be jeopardized. In fact, the applicant's representative has indicated that should the Commission adopt the staff recommendation, the project will be withdrawn and the Settlement abandoned (please see Exhibit I). This would necessitate enforcement action by the Commission and the U.S Fish and Wildlife Service to resolve the loss of habitat that resulted from the previous grading. While this may not be a desirable outcome, Commission staff believes the recommended approach is the one most consistent with the San Luis Obispo County certified LCP.

---

## TABLE OF CONTENTS

<b>I. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT .....</b>	<b>3</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>4</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>5</b>
<b>IV. FINDINGS AND DECLARATIONS .....</b>	<b>7</b>
A. Project Location, Description, and Background .....	7
B. Environmentally Sensitive Habitat Areas (ESHA) .....	9
1. LCP Requirements: .....	9
2. Analysis: .....	11
3. Conclusion: .....	15
C. Violation Finding .....	16
<b>VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....</b>	<b>16</b>

### I. Staff Recommendation On Coastal Development Permit



Application **A-3-SLO-99-083** Staff Report  
Wright Storage & Grading

Staff recommends that the Commission, after the public hearing, approve the permit subject to the conditions below.

**MOTION.** Staff recommends a “YES” vote on the following motion:

I move that the Commission APPROVE Coastal Development Permit A-3-SLO-99-83 subject to the conditions below.

**RESOLUTION.**

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the San Luis Obispo County certified Local Coastal Program, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



### III. Special Conditions

1. Scope of Permit/Revised Plans. This permit authorizes the construction of a one-story storage facility and related parking and circulation areas, and appropriate habitat setbacks, on a 0.86 acre (37, 462 square foot) portion of the site. The remainder of the site (2.14 acres) shall be restored to coastal dune scrub habitat pursuant to Special Conditions 3 and 4 below. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, revised plans for the storage facility that achieves these objectives. The applicant may pursue an alternative use of the 37,462 square foot developable portion of the site, in coordination with the required habitat restoration and applicable provisions of the San Luis Obispo County Local Coastal Program, by applying for and obtaining an amendment to this Coastal Development Permit
2. Compliance with Local Conditions of Approval. All Conditions of Approval adopted by San Luis Obispo County on September 17, 1999 adopted pursuant to an authority other than the Coastal Act (attached as Exhibit D), continue to apply to the project, with the following exceptions:
  - a. Condition 1 is no longer applicable, as the scope of the project has been revised by Special Condition 1, above; and,
  - b. Condition 9, requiring the replacement of habitat at a 1:1 ratio, is replaced by Special Condition 4, below.
3. Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, AND WITHIN 180 DAYS OF THE COMMISSIONS ACTION, the applicant shall finalize, execute, and record, in a form and content acceptable to the Executive Director, a Deed Restriction over 2.14 acres of the project site that limits the use of this area to the restoration and preservation of coastal dune scrub habitat. The Deed Restriction shall also identify the on-site habitat restoration, monitoring, and maintenance requirements contained in Special Condition 4, below. The portion of the project site subject to the Deed Restriction shall be oriented to maximize the habitat value of the required restoration, in accordance with the Habitat Restoration Plan required by Special Condition 4. The Deed Restriction shall include legal descriptions of the parcel being restricted, as well as the restricted area, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the Deed Restriction. This Deed Restriction shall not be invalidated or changed without a Commission amendment to this coastal development permit.
4. Habitat Restoration. The applicant shall be responsible for restoring and protecting coastal dune scrub habitat on 2.14 acres of the project site, and on the 1.79 acres off-site mitigation area specified in the USFWS Settlement Agreement (attached as Exhibit E), according to a three step process involving: 1) development and approval of a habitat restoration and management plan; 2) initiation of off-site habitat restoration and maintenance activities prior to the commencement of project construction, and on-site restoration prior to occupancy of the storage units (or other approved development); and, 3) the implementation of a 5 year monitoring a maintenance program concluding in a report to the Executive Director identifying any remedial actions and additional monitoring and maintenance that may be necessary to achieve restoration success.



Application **A-3-SLO-99-083** Staff Report  
Wright Storage & Grading

- a. Habitat Restoration and Management Plan. PRIOR TO THE ISSUANCE OF THE PERMIT, AND WITHIN 180 DAYS OF THE COMMISSIONS ACTION, the applicant shall submit, for Executive Director review and approval, a habitat restoration and monitoring plan for the 2.14 acres of the site that must be restored to coastal dune scrub habitat, as well as the 1.79 acre off-site mitigation area required by County Condition 9 and the Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit E). The Habitat Restoration and Monitoring Plan shall identify the portion of the project site that is best suited for habitat restoration, and shall provide detailed plans, performance standards, implementation and monitoring schedules, and remedial actions that will be used to restore and protect coastal scrub habitat at both sites. These shall include, but may not be limited to:
- 1) landscape plans that identify specific habitat restoration objectives, such as plant cover, species diversity, and elimination of exotic invasive species;
  - 2) an implementation and monitoring schedule covering a five year period commencing with the first phase of habitat restoration. The schedule shall identify specific site preparation, landscape installation, and maintenance provisions that will be implemented throughout the five year period, and shall provide for a monitoring frequency of one inspection every four months; and,
  - 3) the names and qualifications of the biologist that will supervise all restoration and monitoring and maintenance activities.

Submission of this plan shall be accompanied by written evidence that it has been reviewed and approved by the U.S. Fish and Wildlife Service, or evidence that such approvals are not required.

- b. Timing. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE APPROVED STORAGE FACILITY OR OTHER STRUCTURAL DEVELOPMENT APPROVED THROUGH AN AMENDMENT TO THIS PERMIT (see Special Condition 1), AND WITHIN ONE YEAR OF THE COMMISSIONS ACTION, the applicant shall submit, for Executive Director Review and Approval, evidence that off-site habitat restoration and protection measures have been initiated in accordance with the approved restoration plan. Said evidence shall include, at a minimum: written evidence from the that U.S. Fish and Wildlife Service that the provisions of the Settlement Agreement have been satisfied; and, photographs and other documentation showing that the initial removal of exotic species and the installation of any landscaping called for in the approved restoration plan has been completed.

PRIOR TO THE OCCUPANCY OF ANY OF THE STORAGE UNITS OR OTHER STRUCTURE APPROVED THROUGH AN AMENDMENT TO THIS PERMIT, AND WITHIN ONE YEAR OF THE COMMISSION'S ACTION, the applicant shall submit, for Executive Director review and approval, evidence that on-site habitat restoration has commenced on the 2.14 acre open space easement area. Said evidence shall include, at a minimum, photographs and other documentation confirming that site preparation and landscape installation measures prescribed by the approved restoration plan have been successfully completed.



- c. Remedial Actions. AT THE CONCLUSION OF THE FIVE YEAR MAINTENANCE AND MONITORING PERIOD, the permittee shall submit, for Executive Director review and approval, a report which either: documents the successful establishment of the approved habitat restoration plan; or, provides for an extended monitoring and maintenance program, including appropriate corrective actions, which shall be implemented until the approved habitat restoration plan has been successfully established to the satisfaction of the Executive Director.
5. Condition Compliance. The applicant shall satisfy all requirements of the above conditions within the specified timeframes unless extended by the Executive Director for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

## IV. Findings and Declarations

### A. Project Location, Description, and Background

The project involves the construction of a mini storage facility on a 3-acre site in the town of Los Osos, designated for residential multi-family development. The site was previously cleared of vegetation and graded without the necessary coastal development permit. The site is located on the northwest Corner of Santa Ynez and Mountain View Avenues, in the urban area of Los Osos, San Luis Obispo County (APN 074-223-004) (see Exhibit A). Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail, was lost as a result of the previously completed grading.

The property owner graded and grubbed the site during the summer of 1998, after obtaining a grading permit for the stockpiling of 100 cubic yards of soil on the property from the County. No coastal development permit was issued or noticed for the stockpile project, nor was a Final Local Action Notice received by the Commission, and the grading and vegetation removal that was subsequently completed greatly exceeded the extent of development authorized by the grading permit. According to a letter from the County Building Department, a County building and grading inspector was asked by the applicant if the entire site could be grubbed while the contractor was mobilized. The letter states “[t]he reply from the inspector was that he didn’t see any problem in preparing the site to that extent. Mr. Wright believed that this was proper authorization to perform the work that was completed.” (Entire letter attached as Exhibit G).

Subsequent to the grading and vegetation removal, the property owner applied for a permit from San Luis Obispo County to construct a mini-storage facility on the site. During the processing of this application, the USFWS was informed of the vegetation removal. USFWS staff inspected the site in September 1998, and found several shells of the federally endangered Morro shoulderband snail. A biological assessment also found such shells, as well as a live Morro shoulderband snail within the brush and soil pile on the northwest corner of the parcel.<sup>1</sup>

---

<sup>1</sup> April 13, 2000 letter from USFWS, attached as Exhibit H.



Application **A-3-SLO-99-083** Staff Report  
Wright Storage & Grading

In response to the violation of Section 9 of the federal Endangered Species Act, and in lieu of a Notice of violation and civil penalty, USFWS and the applicant negotiated a settlement agreement which is attached to this report as Exhibit E. In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that the U.S. Fish and Wildlife Service (USFWS) has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record an open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to USFWS.

On September 17, 2000, San Luis Obispo County approved a Minor Use Permit/Coastal Development Permit that authorized the previously completed grading and vegetation removal “after-the fact”, and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet. The locally approved storage project also includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. Approximately 80% of the site (2.4 acres) will be covered with impermeable surface. As mitigation for the loss of coastal dune scrub habitat, the County’s conditions of approval call for implementation of the Settlement Agreement reached between the applicant and USFWS.

This approval was appealed by Commissioners Potter and Nava, and the Commission determined that the appeal raised a substantial issue on February 16, 2000. Since that time, staff has attempted to work with the applicant to identify a project alternative that would comply with LCP requirements calling for the protection of sensitive habitats and still allow for an economic use on the project site. Staff has been unable, however, to come to agreement with the applicant on what such an alternative entails, as discussed in the following findings.





## B. Environmentally Sensitive Habitat Areas (ESHA)

### 1. LCP Requirements:

**ESHA Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats**

*New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

**ESHA Policy 2: Permit Requirement**

*As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170-178 OF THE CZLUO.]*

**ESHA Policy 27: Protection of Terrestrial Habitats**

*Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.*

*Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

**Policy 28: Protection of Native Vegetation**

*Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

**Policy 33: Protection of Vegetation**

*Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*



Application **A-3-SLO-99-083** Staff Report  
Wright Storage & Grading

**Ordinance 23.07.160: Sensitive Resource Area (SRA):**

*The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act...*

**Ordinance 23.07.170: Environmentally Sensitive Habitats:**

*The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title<sup>2</sup>, and as mapped by the Land Use Element combining designation maps<sup>3</sup>.*

- a. **Application content.** A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
  - (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.*
  - (2) Recommends conditions of approval for the restoration of damaged habitats, where feasible.*
  - (3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.*
  - (4) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.**
- b. **Required findings:** Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:
  - (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.*
  - (2) The proposed use will not significantly disrupt the habitat.**
- c. **Land divisions:** No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.*

---

<sup>2</sup> Ordinance 23.11.030 defines Environmentally Sensitive Habitats as “A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations”.

<sup>3</sup> The combining designation map does not map the project site as a Sensitive Resource Area. However, the Commission considers resources as they exist on the ground, rather than areas delineated on a map, in determining whether an area qualifies as an Environmentally Sensitive Habitat. See, for example, the Commission’s consideration of the proposed Los Osos Wastewater Treatment Project (Coastal Development Permit File No. A-3-SLO-97-40).



Application **A-3-SLO-99-083** Staff Report  
Wright Storage & Grading

**d. Development standards for environmentally sensitive habitats:**

- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
- (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.
- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4) Development shall be consistent with the biological continuance of the habitat.
- (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

**Ordinance 23.07.176: Terrestrial Habitat Protection:**

*The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

- a. Protection of vegetation.** *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*
- b. Terrestrial habitat development standards:**
  - (1) **Revegetation.** *Native plants shall be used where vegetation is removed.*
  - (2) **Area of disturbance.** *The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
  - (3) **Trails.** *Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

## **2. Analysis:**

### **Background**

The complex problems raised when environmentally sensitive habitats are found on private property within urban areas are familiar issues to the Commission. The urban area of Los Osos, San Luis Obispo County, is one of the areas where such issues are increasingly being encountered. As the Commission may recall from its consideration of the Los Osos Wastewater Treatment Project (A-3-SLO-97-40) and other recent appeals, many vacant parcels within the Los Osos urban area support sensitive coastal dune scrub habitats that support rare and threatened species, such as the federally endangered Morro shoulderband snail.

In dealing with such situations, the typical approach is to ensure that new development avoids the disruption of sensitive habitats to the greatest degree feasible. At the same time, a reasonable economic use of the property must be accommodated when an applicant can demonstrate that they have a legitimate economic backed expectation for such a use. To mitigate the impacts of such development, a combined approach of protecting the remaining habitat, and acquiring and protecting a type and amount of off-site habitat equivalent to the footprint of the development, is usually required. This has been the



Commission's practice in subdivided areas within the Del Monte and Asilomar Dunes of Monterey County, as well as in other areas of the coastal zone previously designated for development but currently known to contain sensitive habitats.

In some instances, however, alternative approaches may be warranted. Such may be the case in Los Osos, where questions are raised regarding the long term viability of the remnant fragments of what was once a diverse natural dune system which remain in the urban core. Rather than protecting such fragments, some have argued that effective protection of this unique ecosystem could be better achieved by allowing for development to occur in such areas. In return, developers would provide for the acquisition of potentially higher quality habitat that is better connected to other habitats and that is also threatened by development. The sum result theoretically would be a larger aggregation of better functioning habitat.

Clearly, the pursuit and implementation of such an approach must be accompanied by detailed planning and biological assessments that ensure it will effectively preserve and enhance the biological productivity and continuance of the unique and sensitive native habitats. Questions regarding the long term viability of remaining habitats within urban areas, actual threats to habitat from development within proposed mitigation areas, and appropriate mitigation ratios are just some of the issues that need to be resolved before it can be concluded that off-site mitigation will effectively achieve compliance with Coastal Act requirements.

In Los Osos, various efforts including, but not limited to the Baywood and Los Osos Conservation Plan (also known as the "Greenbelt Plan"), and the Estero Area Plan Update, are attempting to resolve these issues. While there are many environmentally beneficial aspects of both of these plans, to date they have not been accompanied by the detailed analysis described above that would be necessary to incorporate the off-site mitigation approach into the LCP. Commission staff is currently working with the involved parties to determine the best method of protecting dune habitat in Los Osos, and, in this regard, has recently provided detailed comments to San Luis Obispo County regarding the Draft Estero Area Plan Update. Staff has also expressed interest in working with the U.S. Fish and Wildlife Service to develop habitat recovery programs that could support the development of such long range LCP planning solutions to the problems associated with adequately protecting sensitive species.

In the mean time, the San Luis Obispo County LCP, as currently certified, provides the standards of review for new development in Los Osos. As detailed below, a strict interpretation of the LCP's ESHA provisions calls for the protection of all sensitive habitat areas, including those fragments which remain in the urban area of Los Osos.

This project exemplifies the difficult issues raised by the circumstances described above, with the added problem that some of the development has already occurred without the necessary coastal development permit. As previously described, the site was graded and cleared of vegetation without the required permits. Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail and qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the LCP, was lost as a result of this grading

### **The Site Contains ESHA**



There is no question that the project approved by the County involves development within an ESHA (see Exhibit F for the Biological Site Assessment). Prior to the grading and vegetation removal conducted in 1998, the site supported coastal scrub vegetation that provided habitat for the Morro shoulderband snail, which has been listed as endangered since December of 1994. According to the U.S. Fish and Wildlife Recovery Plan, this species is threatened by habitat destruction due to increasing development and invasion of non-native plant species such as veldt grass. Other threats include competition for resources with the non-native brown garden snail; extinction due to populations being small and isolated; use of pesticides; and introduction of non-native predatory snails.<sup>4</sup> The response of the U.S. Fish and Wildlife to the applicant's grading is indicative of the significance of the habitat loss in this case. The site clearly meets the LCP's definition of an ESHA, as it provided habitat for rare animal life that could easily be disturbed or degraded by human activities and development.

### **The Project is not an Allowable Use in ESHA**

ESHA Policy 1 reflects Coastal Act Section 30240 by limiting development within ESHA to uses that are dependent on the resource and prohibiting significant disruptions to ESHA. Similarly, ESHA Policy 27 states "[o]nly uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site". Section 23.07.170 also prohibits any development, except that which is dependent on the resource, within ESHA. A storage facility is clearly not a use that is dependent upon being located in a sensitive habitat area.

In addition, the project has not been designed to protect ESHA, as required by Policies 28 and 33, as well as Section 23.07.176 of the CZLUO. The proposed development will consume approximately 2.84 acres of the 3 acre site. This is an excessive amount of site coverage given the sensitive nature of the habitat it supported. According to the Biological Assessment attached as Exhibit F, an analysis of aerial photographs and site conditions conducted after the grading incident concluded that between 1.99 and 2.27 acres of the site consisted of coastal scrub habitat. Thus, it is possible to accommodate a reasonable economic use on the portion of the site that did not constitute ESHA. Such alternatives include a smaller storage facility, or residential development once the necessary public services become available.

---

<sup>4</sup> See U.S. Fish and Wildlife, *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County*, September, 1998.



### **The Project Significantly Disrupts ESHA**

ESHA Policy 2 requires development in or near sensitive habitats to be consistent with the biological continuance of the habitat. This policy, as well as Sections 23.07.170 of the CZLUO, specifically requires demonstration that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat.

The project will permanently remove more than 2 acres of sensitive habitat. This clearly represents a significant disruption to the sensitive habitat that existed on the site, and will preclude its biological continuance.

### **Maximum Feasible Mitigation Has Not Been Provided**

ESHA Policy 2, as well as Section 23.07.170 of the CZLUO, require development within and adjacent to sensitive habitats to provide the maximum feasible mitigation. The overall objective of such mitigation is first to ensure that impacts to sensitive habitats are kept to the absolute minimum, and second, to ensure that unavoidable impacts to sensitive habitats are offset through the replacement and/or protection of an equivalent type and quality of habitat.

In this case, the project has not provided maximum feasible mitigation, because it has not minimized the amount of habitat disruption to the greatest degree possible. Nor has it provided for the restoration of the habitat that was destroyed without the necessary permits. Thus, the conditions of approval require the replacement of the pre-existing habitat, and limit new development to the area of the site that did not support sensitive habitat.

The on-site mitigation and reduction in development required by the conditions will not, however, adequately compensate for the impacts to sensitive habitats that occurred as a result of the previous grading for three reasons.

First, it can not be expected that restoration efforts will be completely successful at achieving the natural habitat values that previously existed on the site. There are numerous variables that can affect the success of this restoration. For example, the grading that occurred may have removed topsoil needed to support native vegetation, and altered small-scale topographical features needed to support the diverse assemblage of plants and animals that make up a healthy coastal scrub ecosystem. Other factors include variable success rates of restoring different species of coastal scrub vegetation, and the unknown ability of the shoulderband snail to re-establish a healthy and viable population within the restoration area. While the conditions of approval seek to facilitate the success of the on-site restoration effort through a comprehensive monitoring and maintenance program, many of these variables are beyond human control.

Second, the new development that will take place on the site will diminish the quality and biological productivity of the restoration area. Edge effects of the development such as noise, light, litter, automobile exhaust, and other aspects of intensified human use adjacent to the restoration



area will limit the ability of restoration efforts to create a habitat area that is as biologically productive as the habitat that previously existed.

Third, the on-site restoration does not compensate for the temporary loss of habitat since grading occurred and until restoration is completed. Given the endangered status of the Morro shoulderband snail, such impacts, although temporary, can have significant adverse impacts on the ultimate survival and recovery of this species.

Off-site mitigation, such as that required by the USFWS and the County approval, also does not provide adequate mitigation to effectively offset the impact of the development on sensitive habitats in and of itself. The proposed mitigation area of 1.79 acres, combined with the money contributed to the future purchase of an additional 0.35 acre of habitat, is intended to protect an amount of habitat that was lost as a result of the previous grading. Given the fact that the off-site mitigation areas represent existing habitat areas, the sensitive habitat that was lost at the project site represents a net reduction in the habitat available to support the biological continuance and recovery of the Morro shoulderband snail.

Along these lines, it is inappropriate to assume that without the proposed off-site mitigation, the habitat values of the entire off-site mitigation area would be lost. Any development proposed in this area, if it was not acquired for mitigation purposes, would still need to conform to the provisions of the LCP protecting sensitive habitats. As is the case with this project for the construction of storage units, the application of these provisions would limit the amount of new development on the mitigation site, and call for the protection and preservation of the surrounding habitat.

In light of these facts, a combined approach of on-site and off-site mitigation is needed to restore and protect an amount of sensitive habitat equivalent to that which was removed from the project site and to mitigate for the project impacts discussed above. As required by the conditions of approval, 2.14 acres of the project site must be restored and protected as coastal dune scrub habitat. The conditions also require implementation of the USFWS Settlement Agreement, which will protect and additional 2.14 acres of coastal scrub habitat at off-site locations. This will achieve a 2:1 mitigation to impact ratio, which, as detailed above, is needed to account for the diminished quality and biological productivity of the restoration area, the temporary loss of sensitive habitats, and the fact that the off-site mitigation areas represent existing habitat.

This mitigation package represents the Commission's best estimation of what is required to off-set and mitigate the habitat that was lost as a result of previous grading activities that occurred on the project site without the necessary permits. While this extent of mitigation appears to be adequate in this case, it is noted that in processing the coastal development permit application for the Los Osos Wastewater Treatment Project, Commission staff recommended that the loss of coastal scrub habitat be mitigated at a 4:1 ratio. The higher mitigation ratio recommended in that instance was a result of the fact that the impacted habitat was of higher quality, and better connected to other habitat, than the habitat that will be impacted by this project.

### **3. Conclusion:**



The project, as proposed, is inconsistent with applicable provisions of the LCP protecting ESHA because it is not an allowable use within such area, will degrade the habitat and eliminate its biological productivity, and does not provide adequate mitigation. In order to achieve LCP consistency, conditions have been attached to the permit that require that the development be reduced and combined with mitigation measures necessary to establish and protect a type and amount of habitat equivalent to that which has been lost as a result of the project.

### C. Violation Finding

The applicant has performed grading and vegetation removal on 2.84 acres of the project site without first obtaining a coastal development permit. Consideration of this application by the Commission has been based solely upon the applicable policies of the San Luis Obispo County Local Coastal Program. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit. As detailed in the previous findings, the conditions of approval attached to this permit seek to offset the adverse impacts that the grading and vegetation removal has had on coastal resources.

## VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment. The County of San Luis Obispo certified a Negative Declaration for the project on December 19, 1997. However, the Commission's review of this project has identified environmental impacts that have not been appropriately resolved by the project and the County's conditions of approval. Thus, the Commission has attached additional conditions of approval to the project intended to prevent the project from having a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

